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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,612	03/08/2001	Gerald Francis McBrearty	AUS-2000-0941-US1	5322

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EXAMINER
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LEZAK, ARRIENNE M

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/801,612

Applicant(s)

MCBREARTY ET AL.

Examiner

Arrienne M. Lezak

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

### **DETAILED ACTION**

Examiner notes that no Claims have been added, amended or cancelled.

Claims not explicitly addressed herein are found to be addressed within prior Office Action dated 26 August 2004 as reiterated herein below.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,933,498 to Schneck in view of US Patent Pub. US 2002/0038296 A1 to Margolus.

3. Regarding Claims 1, 8, 15, 16, 23, 30, 31, 38 & 45, Schneck discloses a data processing operation, (Col. 10, lines 14-26), communication network or world wide web communication network, (Col. 14, lines 66-67 & Col. 15, lines 1-13), having stored data in a plurality of data files, (Col. 7, lines 27-36), a system, method and computer program having code recorded on a computer readable medium for protecting said data files from unauthorized users, (Abstract & Col. 7, lines 40-45), comprising:

- means for receiving user requests for access to data files, (Col. 15, lines 19-67; Col. 16, lines 1-59; and Col. 17, lines 54-59); and

Art Unit: 2143

- means for determining whether said requests are unauthorized intrusions into said requested data files, (Col. 15, lines 19-67; Col. 16, lines 1-59; and Col. 17, lines 54-59).

4. Though Schneck discloses a tamper detection/reset mechanism and several countermeasures, (including encryption), (Schneck - Col. 7 & Col. 8, lines 1-57), Schneck does not specifically teach a means, responsive to a determination that a request is an unauthorized intrusion, for changing the identification of the requested data files. Margolus teaches a data repository with access-authorization and backup functionalities wherein existing versions of data may be replaced by a new version of the data, (Paragraphs 0011-0032; 0055; 0062 & Claims 1-153). Further, Margolis specifically enumerates that the method may further include a client retrieving a data item by accessing a named object using an access-authorization credential to select the named object, and using the contents of the named object to determine the location of the data item on the storage device, (Paragraph 0011 & Claims 18-26). Moreover, Margolis enumerates a backup of data items stored on the storage device and a keeping of records defining the association between data items and names, (Paragraph 0011 & Claims 18-26).

5. It would have been obvious to one of ordinary skill in the art at the time of invention by Applicant to incorporate the data backup/replacement means of Margolus into the Schneck system for controlling access and distribution of digital property. The motivation to combine is found within Schneck which enumerates a need for a system of distributing data that prevents copying, restricts re-

Art Unit: 2143

distribution of the data and provides controlled access to the data, (Schneck – Col. 6, lines 43-46). As Margolus specifically teaches a means for copy prevention/re-distribution restriction/access control, use of the same within Schneck would have been obvious. Thus, Claims 1, 8, 15, 16, 23, 30, 31, 38 & 45 are found to be unpatentable over the combined teachings of Schneck in view of Margolus.

6. Regarding Claims 2-4, 9-11, 17-19, 24-26, 32-34 & 39-41, the teachings of Schneck in view of Margolus are relied upon for their teachings as disclosed herein. Schneck in view of Margolus further discloses a means for changing the identification of the requested data files, which change the overt identification of the requested files by renaming the files, (per pending Claims 3, 10, 18, 25, 33 & 40), wherein the file renames do not indicate the contents of the renamed files, (per pending Claims 4, 11, 19, 26, 34 & 41), (Margolus – Paragraph 0011 & Claims 18-26). Examiner notes that in creating an access-authorization protected new version of the data item, it would have been obvious to change the overt identification, (name), of the requested file to discourage further non-authorized access. Examiner further notes that the rename of the new file would obviously be unrelated to the file contents for purposes of greater file protection, especially within a tamper detection system wherein the file data had been compromised. Moreover, Margolus teaches the use of the new version contents for location determination, which further implies a covert means of file replacement, identification and access. Thus, Claims 2-4, 9-11, 17-19, 24-26, 32-

Art Unit: 2143

34 & 39-41 are found to be unpatentable over the combined teachings of Schneck in view of Margolus.

7. Regarding Claims 5, 12, 20, 27, 35 & 42, the teachings of Schneck in view of Margolus are relied upon for their teachings as disclosed herein. Schneck in view of Margolus further discloses a means for changing the identification of the requested data files, which change the overt identification of the requested files by renaming the files, wherein the file renames do not indicate the contents of the renamed files, wherein it would have been obvious to move said renamed files into a new directory, (Margolus – Paragraph 0011 & Claims 18-26). Examiner further notes that the renamed files would obviously need to be moved into a new directory for purposes of greater file protection, especially within a tamper detection system wherein the file data had been compromised. Moreover, Margolus teaches the use of the new version contents for location determination, which further implies a covert means of file replacement, identification, location & access. Thus, Claims 5, 12, 20, 27, 35 & 42 are found to be unpatentable over the combined teachings of Schneck in view of Margolus.

8. Regarding Claims 6, 7, 13, 14, 21, 22, 28, 29, 36, 37, 43 & 44, the teachings of Schneck in view of Margolus are relied upon for their teachings as disclosed herein. Schneck in view of Margolus further discloses a means for assigning to each of the renamed files a covert name indicating a covert location in said new directory for each of said renamed files, (per pending Claims 6, 13, 21, 28, 36 & 43) wherein a log references each renamed file to the covert name of the respective file so as to indicate the covert location of said file in said new

Art Unit: 2143

directory, (per pending Claims 7, 14, 22, 29, 37 & 44), (Margolus – Paragraph 0011 & Claims 18-26). Examiner notes that as Margolus teaches the use of the contents of the new version named object(s) to determine the location of the same on the storage device, that content could obviously include a covert name for greater protection. Examiner further notes that Margolus teaches the keeping of records documenting the association between the data items and the names, which records would obviously be kept in some sort of directory with a log for reference, maintenance, access, identification & location convenience. Moreover, Examiner notes that within a system maintaining several directories, it would have been obvious for each directory to maintain its own log in addition to a separate system-wide log, (or reference to the same), identifying the location of data throughout the system on all directories. Thus, Claims 6, 7, 13, 14, 21, 22, 28, 29, 36, 37, 43 & 44 are found to be unpatentable over the combined teachings of Schneck in view of Margolus.

### ***Response to Arguments***

9. Applicant's arguments filed 30 November 2004, have been fully considered but they are not persuasive. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made.

10. Regarding Applicant's Declaration under 37 C.F.R. 131, Examiner finds the same to be ineffective as it does not overcome the priority date of the prior

Art Unit: 2143

art. Examiner has reviewed the provisional application for the Margolus ('535) patent publication finding the same to disclose those teachings relied upon for the Office Action dated 26 August 2004 as noted herein. As such, the priority date of the provisional application, (18 February 2000), is effective, rendering Applicant's Declaration ineffective. Thus, Examiner reiterates the original grounds for rejection as Examiner finds Schneck on view of Margolus to fully encompass and anticipate all claims as enumerated by Applicant.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.**

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

12. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 2143

**Conclusion**


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arrienne M. Lezak whose telephone number is (571)-272-3916. The examiner can normally be reached on M-F 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571)-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Arrienne M. Lezak  
Examiner  
Art Unit 2143

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